

BIODIVERSITY LAW AND GOVERNANCE DAY 2022

OUTCOMES STATEMENT FROM CBD COP15

Saturday 10 December, 2022 | Montreal, Canada

During the COP15 of the Convention on Biological Diversity

McGill University Faculty of Law

Moot Court, New Chancellor Day Hall | 3644 Peel St. H3A 1X1

Join the Conversation on Twitter #BLGD2022 @BLGInitiative

In collaboration with over 200 partners in the Biodiversity Law and Governance Initiative, we thank the Presidency of COP15, our generous Chinese, Canadian and Quebec hosts, the distinguished delegates, observers and also the CBD Secretariat for the opportunity to share the outcomes and findings of the 2022 COP15 Biodiversity Law and Governance Day.

SPECIAL THANKS TO EXPERTS FROM...



Cambridge Journal of
International Law



IITIO



MJSDL
McGill Journal
of Sustainable
Development Law



RDDDM
Revue de droit
du développement
durable de McGill



University
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SUSTAINABLE DEVELOPMENT
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During CBD COP15, on the world's Human Rights Day, the 10th of December 2022, Parties and Observers to the CBD and other biodiversity accords convened nearly 400 jurists, negotiators, law and policy makers, practitioners, indigenous and local leaders, stakeholders and scholars, to scale up law, policy and practice contributions to implementing the CBD regime and the coming Global Biodiversity Framework, advancing our world's Sustainable Development Goals (SDGs) through legal and institutional measures.

The 2022 Biodiversity Law & Governance Day was the third global symposium of its kind, building on the success of CoP14's BLGD in Sharm El-Sheikh, and COP13's BLGD in Cancun. It was a rich and substantive exchange, focused on dialogue, engagement and action.

Together, we are building a global biodiversity law and governance community of practice to support the implementation of the Global Biodiversity Framework, backed by the CBD, its Cartagena and Nagoya Protocols, in full alignment and integrated with the other Rio Conventions, the global Human Rights Framework, and the global SDGs.

Law and governance can be a powerful tool for our world's biodiversity.

If carefully crafted and faithfully enforced, legal and institutional reforms can take down barriers and contribute immensely to achieving the objectives of the Convention.

COP15's Biodiversity Law & Governance Day 2022 identified innovations, shared experiences, and charted a way forward in three main areas:

- Advancing legal elements of the post-2020 Global Biodiversity Framework - COP 15 is expected to consider for adoption the post-2020 Global Biodiversity Framework in the context of the 2050 Vision, the 2030 Agenda for Sustainable Development and other processes. Much can be learned from law and governance approaches to implement the CBD - an ongoing, independent, experts-led legal and governance assessment is needed, and shall be developed. Legal and governance reform can make a crucial contribution to advancing the principles and targets of the framework, and must be fully integrated into the indicators and monitoring tools. There is a pressing need to recognise and apply Indigenous law and philosophies, especially given the grounding of many Indigenous laws in the interconnected relationship with Mother Earth and all living beings.

- **Enhancing nature-based solutions, sustainable use of natural resources and synergies with biodiversity and other treaties** - Many international treaties and processes are key for biodiversity and ecosystems, including the CITES, the Convention on Migratory Species, the Ramsar Wetlands Convention, the UNFCCC and its Paris Agreement, the UNCCD, the oceans and water conventions, human rights covenants and accords, trade and investment agreements, and also indigenous treaties. Parties to the CBD and international organizations must strengthen and improve cooperation so as to enhance synergies and address intersections between regimes. Indigenous treaties, including the new Indigenous Peoples Economic and Trade Cooperation Arrangement (“IPETCA”), embody mechanisms to foster biodiversity and environmental stewardship while reaffirming the need for integrating legal pluralism into legal biodiversity frameworks and targets. In many countries, treaty usufructuary rights for hunting, trapping, fishing and harvesting give quasi-constitutional protection to Indigenous traditional territory and may help protect habitat for all living things within the ecosystems of the traditional territories. Indigenous hunters, trappers, fishers and harvesters live connected to the environment and their traditional knowledge in resource stewardship allows that resource to thrive. These rights could be supported through an additional closer strategic alliance. Another potential conservation avenue is legislative support for granting legal standing to rivers and other ecological systems and features. Myriad law and governance mechanisms can and shall be activated to scale up nature-based solutions, to support fair and sustainable biodiversity trade, to exponentially accelerate effective, high-impact biodiversity investment and financing on all levels, and to strengthen indigenous and local community engagement in conservation and sustainable use of biodiversity and ecosystems, worldwide.
- **Strengthening the effectiveness of the Nagoya Protocol and addressing genetic information:** The Nagoya Protocol entered into force in 2014. Many lessons can be learned from recent national and regional Access and Benefit Sharing (“ABS”) agreements implementation and capacity building efforts. For these agreements to be truly equitable and fair, and agreements to be meaningful and accountable, these concepts should mean the same to all involved, providers and users alike. Policy and regulatory options for Digital Sequence Information (“DSI”) should be addressed and assessed through the lenses of equity and fairness, allowing for providers’ Free and Prior Informed Consent. Digitalisation of genetic resources potentially shifts power balances, so its effects on ABS must be monitored to achieve an equitable and fair sharing of benefits and greater Protocol effectiveness. It is thus imperative that negoti-

- ators conclude unequivocally on a text to provide clear guidance for providers and users of genetic resources, notably regarding governance structures. This will also impact subsequent negotiations on ABS and DSI under adjacent legal instruments, including UNCLOS and the FAO International Treaty on Plant Genetic Resources. Finally, there is a need to involve and integrate Indigenous peoples' voices in this discussion. Indigenous Intellectual property and Traditional Knowledge needs to be given not mere passing mention and continuous study, but real authority and control through effective mechanisms that recognize and extend beyond other limited concepts of Intellectual Property. The time-honored call for "Nothing about us without us" is crucial.

Offering dialogue, keynotes, and parallel roundtable/panel sessions, BLGD 2022 built on BLGD 2016 and 2018, by:

- Profiling and sharing innovative multi-level biodiversity law and governance mechanisms, challenges and best practices;
- Catalysing knowledge exchange between delegates, legal practitioners, and the legal academic community to co-generate new law and governance knowledge and approaches; and
- Facilitating collaboration within the law and governance community to support capacity development for implementing the CBD, the post-2020 Global Biodiversity Framework and SDGs 14 and 15.

The community was especially honoured to announce the inaugural recipients of the Biodiversity Law and Governance Global Leadership Awards:

- **Mr Basile van Havre** is recognized for decades of dedication to biodiversity conservation, especially for his critical contributions to the architecture of the global biodiversity conservation framework, in recent years of unfailing service as co-chair for the CBD Open-Ended Working Group.
- **Adv Viviana Elsa Figueroa** is recognized as a leader for Indigenous women and youth working for biodiversity, especially for her passion and leadership within the Indigenous Women Network on Biodiversity for Latin America and the Caribbean.

- **Adv Maria del Pilar Vanegas Guzman** is recognized for her commitment to conflict resolution, human rights and humanitarian work, notably in her service to the International Committee of the Red Cross, and her contributions as President of the International Law Association in one of the world's most mega-diverse countries, Colombia.
- **Dr Amy Fraenkel** is recognized for over 30 years of dedicated and inspiring commitment to biodiversity conservation and sustainable use through international law, in the CBD, in the United Nations Environment Programme, in the United States government, and currently as Executive Secretary for the Convention on Migratory Species.

All Parties, Observers and stakeholders are very welcome to join this Initiative, as sponsors, partners, thematic leaders or participants. Senior representatives and experts from CBD Parties have formed a Programme Committee to guide the growing Initiative. We would especially welcome all interested governments and stakeholders to contact us, in order to help shape the next BLGD at COP16 in 2024, and ideally, to serve distinguished judges for the 2024 biodiversity law and governance global leadership awards, and an inaugural biodiversity law and policy student essay competition in 2024.

In conclusion, we are very grateful to the Centre for International Sustainable Development Law (CISDL) for co-hosting the event, together with partners from McGill University, University of Montreal, University of Quebec a Montreal, University of Costa Rica, University of Cambridge, University of Kisangani and others, with thanks for the guidance of leaders in the Convention on Biological Diversity Secretariat (SCBD), the United Nations Development Programme (UNDP), United Nations Environment Programme (UNEP), International Union for the Conservation of Nature World Commission for Environmental Law (IUCN-WCEL), International Development Law Organization (IDLO), International Law Association (ILA), Sustainable Development Solutions Network (SDSN) and other partners organisations.

BACKGROUND

OUTLINE PROGRAMME

8:30 - Registration

9:00 Masters of Ceremonies: **Eva Wu** (JD/BCL Cand, McGill University / Legal Researcher, CISDL) & **Adv Ignacio Antonio Sánchez González** (Associate Fellow & Programme Coordinator, CISDL)

Hosts of Nodes: **Dr Markus Gehring** at Lauterpacht Centre for International Law LCIL in Cambridge (Lead Counsel, CISDL / Assoc Prof, Univ Cambridge); **Adwoa Appiah** at Balsillie School of International Affairs in Toronto/Waterloo (PhD Cand / Researcher, Univ Waterloo); **Prof Jorge Cabrera** at Univ Costa Rica UCR in San Jose (Lead Counsel, CISDL / Prof, UCR); **Adv Hafij Khan** at Climate Justice Centre CJC in Dhaka (Legal Fellow, CISDL / Exec Director, CJC Bangladesh) & **Adv Erick Kassongo** at Centre Congolais du Development Durable CODED in Kinshasa (Legal Fellow, CISDL / Exec Director, CODED).

Online Moderators: **Tejas Rao** (PhD Cand, Univ of Cambridge / Manager, CISDL); **Adv Freedom-Kai Phillips** (Operations Director, CISDL); **Camille Duhai** (Assoc Managing Editor, McGill Journal of Sustainable Development Law JSDL) & **Ying Wang** (Phd Cand, Univ de Montreal)

9:00 - 2022 Biodiversity Law & Governance Day Grand Opening (Montreal Rm)

9:30 Welcomes from Hosts & Partners

Chairs: **Prof Marie-Claire Cordonier Segger** FRSC FRSA WIJA (Chair, BLGI & Senior Director, CISDL / Leverhulme Trust Visiting Prof, Univ Cambridge / Prof, Univ Waterloo) & **Prof Jorge Cabrera** (Prof, Univ Costa Rica / Lead Counsel, CISDL)

Opening: **Mr Basile van Havre** (Director-General, Canadian Wildlife Service ECCC / Co-Chair, CBD Open-Ended Working Group Post-2020 Global Biodiversity Framework)

Welcomes: **Prof Richard Janda** (Prof, McGill Univ Faculty of Law) / Adv Pierre Gonthier (Treasurer, CISDL Board of Governors); **Prof Konstantia Koutouki** (President, International Law Association / Prof, Univ of Montreal); **Prof Christina Voigt** (Chair, IUCN World Commission on Environmental Law WCEL / Co-Chair, Paris Agreement Implementation & Compliance Committee PAICC); **Adv Arthur van Buitenen** (Advisor, International Development Law Organisation IDLO); **Adv Wayne Garnons-Williams** (Chair & Founding President, International Inter-Tribal Trade & Investment Organisation IITIO); **Prof Blaise-Pascal Mihigo** (Co-directeur, l'Observatoire sur l'Agenda 2030 des Nations Unies Univ Quebec a Montreal UQAM); **Prof Qin Tianbao** (Director, Research Institute of Environmental Law Wuhan Univ / Assoc Dean, Wuhan Univ)

BACKGROUND

OUTLINE PROGRAMME

9:30 - *Concurrent Experts Panels / Roundtables Sessions (I)*

10:45 **I. Experts Roundtable: Sustainable Natural Resources Stewardship (Cartagena Rm)**

How can emerging principles of international law on the sustainable natural resources management for development contribute to the conservation of biodiversity? What are the most recent innovations in international law for sustainable use of oceans and terrestrial biodiversity? What are the main challenges and opportunities for advancing biodiversity conservation in other area of international law (e.g. trade law, plastics treaty negotiations)?

Hosted by University of Cambridge & Swiss Italian University (USI)

Chairs: **Prof Konstantia Koutouki** (Prof, Univ Montreal / President, ILA Canada) & **Prof Ilaria Espa** (Prof, Università della Svizzera italiana / Lead Counsel, CISDL)

Speakers / Discussants: **Prof Cymie Payne** (Prof, Rutgers Univ); **Prof Markus Gehring** (Assoc Prof, Univ of Cambridge / Lead Counsel, CISDL); **Prof Alexandra Harrington** (Lecturer, Lancaster Univ); **Adv Alessandra Lehmen** (President, Brazilian Bar Enviro Law Commission); **Adv Cairo Robb** (Legal Fellow, CISDL); **Adv Maria del Pilar Vanegas Guzman** (President, ILA Colombia).

Moderator: **Adv Diana Quevedo** (Associate Fellow, CISDL / Contractor, Enviro Law Institute)

II. Experts Roundtable: Genetic Information and Access and Benefit Sharing in the Nagoya Protocol (Nagoya Rm)

What are the legal innovations and progress made in the implementation of ABS after the Nagoya Protocol? What are challenges for the successful implementation of ABS in practice? What are the possible political and practical solutions for Digital Sequencing Information, especially for developing countries?

Hosted by IDLO, University of Costa Rica (UCR), UNEP & CISDL

Chairs: **Prof Jorge Cabrera** (Prof, Univ Costa Rica / Lead Counsel, CISDL), **Dr Arthur van Buitenen** (Adv, IDLO)

Speakers / Discussants: **Dr Manuel Ruiz** (former Director, Sociedad Peruana de Derecho Ambiental); **Prof. Timothy Hodges** (Prof of Practice, Institute for the Study of International Affairs McGill Univ); **Adv Henry Novion** (International ABS Consultant / former Executive Director CGEN); **Adv Juan Francisco Bascuñán** (Environmental Law Expert / former Nagoya Protocol Negotiator, Chile); **Dr Marsha Cadogan** (Vice-President, International Law Association); **Dr Óscar Lizarazo** (Universidad Nacional de Colombia, Colombia); **Adv Susan Ann Samuel** (Assoc Fellow, CISDL / PhD Candidate, Univ of Leeds)

Moderators: **Adv Ignacio Antonio Sánchez González** (Programme Coordinator, CISDL)

BACKGROUND

OUTLINE PROGRAMME

11:10 - *Concurrent Experts Panels / Roundtables / Workshop Sessions (III)*

12:30 **III. Experts Roundtable: Nature-Based Legal Solutions for Climate & Biodiversity Emergencies (Cartagena Rm)**

How can nature-based legal solutions mitigate climate and biodiversity emergencies? What are the criticisms or weaknesses of nature-based legal solutions and how should they be addressed? How are governments and industry fostering or frustrating the use of nature-based legal solutions for climate and biodiversity emergencies?

Hosted by Centre Congolais pour le Développement Durable (CODED), University of Cambridge, BSIA & University of Victoria

Chair: **Prof Markus Gehring** (Assoc Prof, Univ Cambridge / Lead Counsel, CISDL) & **Dr Joanna Miller Smallwood** (Lecturer, Sussex Law School)*

Speakers / Discussants: **Prof Deborah Curran** (Univ of Victoria / Exec Director, Enviro Law Clinic); **Julie Wright** (Univ of Waterloo/ Director, Partners for Action/ Councillor, Ward 7); **Adv Erick Kassongo** (Exec Director, CODED / Legal Fellow, CISDL); **Robert Tansey** (Senior Policy Advisor, The Nature Conservancy); **Dr Maria Lechner Reynal** (President, ECOS / Vice-Chair, GEF-CSO Network); **Adv Hafij Khan** (Legal Fellow, CISDL / Executive Director, Centre for Climate Justice Bangladesh); **Julia Bethe** (COP 15 Policy & Advocacy Lead, Youth 4 Nature/ Engagement Officer, European Biodiversity Partnership)

Moderator: **Lydia Young** (Assoc Fellow, CISDL)

IV. Experts Roundtable: Indigenous Treaties, Trade & Biodiversity (Nagoya Rm)

How are international treaties and governance processes advancing biodiversity and ecosystem goals? What innovations are being developed through the Indigenous Peoples Economic and Trade Cooperation Agreement (IPETCA) facilitating the intersection between Parties to the CBD, industry and Indigenous interests? How are governments fostering or frustrating cohesion for biodiversity-related UN SDG goals through law and governance mechanisms in countries like Canada?

Hosted by IITIO; University of Waterloo School of Environment, Enterprise & Development (SEED) & McGill University

Chair: **Adv Wayne Garnons-Williams** (Chair, IITO / Senior Director, Garwill Law)

Presentation: **Eva Wu** (JD/BCL Cand, McGill Univ / Legal Researcher, CISDL) & **Elaina Cox** (MSc Cand / Researcher, Univ Waterloo)

Speakers / Discussants: **Prof Lindsay Borrows** (Asst Prof, Queens Univ); **Dr Odeeth Lara-Morales** (Assoc Fellow, CISDL / Programme Manager, UNESCO Voices of Future Generations); **Sylvia Plain** (Board Member, ReseauCMI / Founder, GreatLakes Canoe Journey)

Moderator: **Eva Wu** (JD/BCL Cand, McGill Univ / Legal Researcher, CISDL)

BACKGROUND

OUTLINE PROGRAMME

12:30 - High-Level Plenary: Advancing Legal & Governance Elements of the Post-2020 13:30 Global Biodiversity Framework

How to advance the post-2020 Global Biodiversity Framework by scaling up law and governance capacity, practice and reform?

Hosted by CISDL, McGill Faculty of Law & BSIA

Chairs: **Prof Jorge Cabrera** (Prof, Univ Costa Rica / Lead Counsel, CISDL) & **Prof Marie-Claire Cordonier Segger WIJA** (Exec Sec, CLGI & Senior Director)

Plenary Address: **Dr Amy Fraenkel** (Executive Secretary, Convention on Migratory Species Secretariat); **Mr Basile van Havre** (Director-General, Canadian Wildlife Service Environment & Climate Change Canada / Co-Chair, CBD Open-Ended Working Group for Post-2020 Global Biodiversity Framework - video); **Adv Viviana Elsa Figuerao** (Leader, Indigenous Women Network on Biodiversity for LAC);* **Dr Ivonne Higuero** (Secretary-General, CITES)

Moderator: **Adwoa Appiah** (PhD Cand / Researcher, University of Waterloo)

13:30 - Closing & 2022 Global Biodiversity Law & Governance Leadership Awards

14:00 Closing speaker: **Jasen Erbežnik** (McGill Journal of SD Law, Editor-in-Chief)

Rapporteurs: **Victoria Flaherty** (JD/BCL Cand, McGill Univ), **Sofia Watt Sjöström** (JD/BCL Cand, McGill Univ) & **Thalsa-Thiziri Mekaouche** (Legal Researcher, CISDL/ Yale Univ).



THANK YOU TO ALL WHO JOINED US FOR BLGD 2022



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